

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1082 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

MR.JUSTICE R.P.DHOLAKIA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 - No

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KANTIBHAI RAYJIBHAI SONVA

Versus

STATE OF GUJARAT

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Appearance:

MR PM VYAS for Petitioner

MR DN PATEL, Addl. Govt. Pleader for Respondent No. 1

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CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 13/02/98

ORAL JUDGEMENT (Per: R.P.Dholakia,J.)

The appellant-original accused has preferred this appeal against the judgment and order passed by Additional Sessions Judge, Nadiad, on 10th July, 1997 in Sessions Case No.100 of 1996 whereby he has been sentenced to undergo rigorous imprisonment for ten years

and a fine of Rs.1,000/-, (in default, to suffer more rigorous imprisonment for three months) for the offence punishable under Sec.376 of Indian Penal Code.

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#. We have called for the record and proceedings and heard learned advocate appearing for the appellant.

#. Learned Additional Sessions Judge, after hearing the arguments of both the sides and on appreciation of evidence, has passed the judgment and order convicting the accused.

#. The facts of the case in short are that on 9-2-1996 at about 8 p.m., when only victim and her younger brother were at home, the appellant-original accused came there and told brother of the victim to hand over the torch in the field. At the time the brother of the victim went for handing over the torch, the appellant-original accused caught the victim, dragged her to the backside of her house, threatened and gave push to her. He then removed her petticoat and also his pant and was committing rape on her. At that time, father of the complainant came there and the appellant-original accused ran away. The victim was injured and there was bleeding from her vagina. She has filed a complaint to that effect. Clothes of the victim have been attached as muddamal and she was taken to the hospital with police yadi for medical examination and treatment. Thereafter, Police has started investigation, recorded the statements of complainant-victim and other witnesses, collected relevant documentary evidences and appellant-accused was arrested. Panchnama to that effect was drawn, clothes of the accused were taken as muddamal and accused was sent for medical examination. Thereafter, Police has filed the charge-sheet against the accused and charge was framed by the Court against the accused. The accused has pleaded not guilty to the charge and claimed to be tried. Further statement of the accused was recorded under Sec.313 of Cr.P.C.

#. Mr.L.S.Vyas, learned advocate appearing for the appellant-accused has argued on various points on going through the record. He has argued that appellant-original accused was innocent and was falsely involved in this offence because of enmity between him and father of the complainant. He has argued that prosecution has failed to prove the charges against the accused beyond reasonable doubt. He has argued that evidence of the complainant was not believable. He has also argued that the presence of father of the victim was

not satisfactorily proved by the prosecution and according to him, he was a got up witness. He has further argued that age of the victim was not correctly proved. Medical evidence was not supporting the case of the prosecution and in absence of any corroborative evidence, learned Additional Sessions Judge ought not have come to the conclusion and convicted the appellant-accused only on the evidence of victim. Lastly, he has argued that sentence imposed is also very harsh and on that count also, appeal is required to be admitted.

#. To prove the charge against the accused, the prosecution has examined and relied upon the oral evidence of the complainant-victim. She has clearly and categorically deposed about the incident before the Court. On behalf the accused, learned advocate has minutely cross-examined the victim but nothing has come out which goes against the case of the prosecution. It is a well settled principle that the corroboration of the oral evidence of the victim is not required and the Court can solely rely upon and act on the evidence of the victim and convict the accused in this type of offence if evidence of the victim is found to be trustworthy and reliable. In the instant case, the prosecution gets corroboration from oral evidence of father of the victim who has seen the incident, which fact was reflected in the complaint also. Therefore, it cannot be said that it is an afterthought or he is a got up witness. Over and above, Medical Officer, Mr.Vaghela has categorically deposed before the Court that he has examined the victim and after careful examination, he found that there was an injury and bleeding was also there in her vagina. He has deposed that as she is of tender age and birth certificate is there on record, ossification test was not required to be carried out. Moreover, there is FSL report and oral evidence of panch witnesses in whose presence clothes of the victim and accused were recovered as muddamal and sent to FSL for report. Blood of the groups of victim and accused has been found from the underwear of the accused which also supports the say of the prosecution.

#. We have gone through the record and it transpires that the birth date of the complainant-victim is 22-8-1981. Said fact was proved by examining P.W.No.4, Nisarali Kamarali at exh.32 by producing birth certificate of the victim at exh.33. So, on the date of incident, i.e. on 9-2-1996, victim was aged about fourteen years and six months approximately. It is observed by the Apex Court in the case of Sidheshwar

Ganguly Vs. State of West Bengal, AIR 1958 SC 143 that "birth certificate is the conclusive piece of evidence of the girl's age". In the instant case, admittedly, on the date of incident, victim was below sixteen years of age. The same is supported by birth certificate and oral evidence of the complainant-victim at ext.17 and father of the complainant at ext.37 which appears to be convincing. It is to be noted that accused was not able to prove the enmity between him and father of the victim. It cannot be believed that for a petty quarrel, no father will involve his own daughter in this type of cases for the purpose of taking revenge against other person. In the instant case, say of the prosecution gets support from medical evidence as also from FSL report. Therefore, the defence of the accused is not tenable.

#. In our opinion, the prosecution has established and proved the case against the accused beyond reasonable doubt. The learned Additional Sessions Judge, after appreciating the evidence on record, has rightly come to the conclusion and we are of the view that looking to the tender age of the victim, the sentence recorded by the learned Additional Sessions Judge is proper and not required to be interfered with. Hence, no illegality or irregularity has been committed by him.

#. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

".... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudry* (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

##. In the facts and circumstances of the case, it is a fit case wherein we do not find it necessary to interfere with the judgment and order passed by the learned Additional Sessions Judge, Nadiad in Sessions Case No.100 of 1996 on 10-7-1997. Appeal is, therefore, required to be rejected and is accordingly rejected.

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